BAIL SLIP

The Appellants herein / Accused viz. 1. Sathish 2. Murugesh were directed were directed to be released on bail as per order of this Honourable Court dated 28.9.2001 in Crl.MP.No.6236/01 in Crl.A.No.827/2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.827 of 2001

1. Sathish
2. Murugesh ..Appellants/accused 1 and 2

-vs-

State rep.by
Forest Range Officer
Sirumugai
in O.R.No.45/2001 .. Respondent/complainant

This appeal is filed against the Judgment made in C.C.No.134 of 2001 dated 24.7.2001 on the file of the Presiding Officer, Special Court for E.c/NDPS Act cases for the Districts of Coimbatore, Erode and Nilgiris at Coimbatore.

For appellants : Mr.C.S.Dhanasekaran
For respondent : Mr.V.R.Balasubramaniam
Additional Public Prosecutor.

JUDGMENT

This appeal has been preferred against the Judgment in C.C.No.134 of 2001 on the file of the Presiding Officer, Special Court for E.C/NDPS Act cases for the Districts of Coimbatore, Erode and Nilgiris at Coimbatore.

2. The case of the prosecution in brief is that on 4.3.2001 at about 5.30p.m., when the complainant, the Forest Range Officer, Sirumugai Forest, Sirumugai was indulged in raid at Bethikuttai Pirivu, Nilgiris Eastern Slope Kappukadu, Koothamandi Southern Beat near Thombu Pallam along with his party found the accused cultivating ganja plants in the Reserve Forest by way of ploughing the land, sowing seeds and irrigating through hose pipes and thereby A1 and A2 have committed an offence under Section 21(d)(e) and (g) of Tamil Nadu Forest Act and Section 20(a) of NDPS Act 1985.

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3. On appearance of the accused, the learned Judge had furnished copies under Section 207 of Cr.P.C. and when the charges were framed under Section 21(d)(e) and(g) of Tamil Nadu Forest Act and Section 20(a) of the NDPS Act and when questioned the accused, pleaded not guilty.

4. Before the trial Court, P.Ws 1 to 5 were examined. Exs P1 to P9 were exhibited and M.Os 1 to 5 were marked.

5. P.W.1 is the Forest Ranger of Sirumugai Forest Range. On 24.3.2001 at about 5.30p.m., while, he was on his routine patrol duty along with Sub Inspector, Sivalingam and other forest officials, saw both the accused at Thombupallam Slope at about 5.30p.m., have trespassed into the forest area and after cleaning the forest have raised ganja plant and were watering the same with the help of hosepipes in an area of 1 ½ acres and the ganja plants were all two months old crops with the height of 1 ½ feet. After complying with the mandatory provision under Section 50 of the NDPS Act asking the accused whether they prepared for a search to be conducted before the gazetted officer or before the Judicial Magistrate. Both the accused gave their consent for the search being made by P.W.1 himself. Thereafter, he had recorded the submissions of A1 and A2 and under Ex P1 mahazar had recovered M.O1 Sickle, M.O.2 axe, M.O.3 series Spades ,M.O.4 hose pipe and has also collected five ganja plants under "H" form ExP2 and has destroyed the remaining ganja plants by fire. Ex P3 is the statement of A1 and Ex P4 is the statement of A2. Thereafter, he has arrested both the accused and produced the accused before the Judicial Magistrate, Mettupalayam for remand on the following day. Out of five ganja plants, the seizure from the place of occurrence, one plant was sent for chemical analysis. Ex P5 is the letter of requisition of P.W.1 to the Court for sending one of the Ganja Plants seized for chemical analysis. Ex P6 is the notification to show that the place of occurrence is a Tamil Nadu Government's Forest lands. ExP7 is the sketch. Ex P8 is the analyst's report.

6a. P.W.2 has also accompanied with P.W.1 on 24.3.2001 in the raid. He would also corroborate the evidence of P.W.1 to the effect that at the place of occurrence, he saw the accused working in the forest land. According to him, P.W.1 had recorded their statements Exs P3 and P4 from A1 and A2 respectively. According to P.W.2, in an extent of 1 ½ acres, the accused have raised 900 ganja plants and at that time, when he saw the accused, they were watering ganja plants through hosepipe and that five ganja plants were seized from the place of occurrence under Form"H" which is Ex P2. Ex P1 is the mahazar for the recovery of M.Os from the place of occurrence. Thereafter, the case was registered under O.R.No.45/2001 against the accused.

6b. P.W.3 is the Assistant Director of Regional Forensic Science Laboratory, Coimbatore. According to him, the plant measuring 120 cms weighing 100gms connected with O.R.No.45/2001 was received in his office

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for analysis accompanied by a letter No.470 dated 9.4.2001 from P.W.1 and after analysis, the remaining samples were sent back to the Court and the chemical analysis was done by Analyst Banumathi.

6c. P.W.4 is the Sub Inspector of Police, Hudco Police Station, Dharmapuri District. According to him, he had also accompanied with P.W.1 at his request. He has also corroborated the evidence of P.W1 and P.W.2. He also speaks about the cultivation of ganja plants amounting to 1000 in number by A1 and A2 and also speaks about the recovery of material objects including five sample plants from the place of occurrence under Form" H".

6d. P.W.5 is the Head Clerk of E.C.Court, Coimbatore. According to her,as per Ex P5 letter of requisition from P.W.1, she had sent the sample plant for chemical examination through Mr.A.R.Subramaniam, Forest Guard and that Ex P8 is the report received from the Forensic Science Laboratory.

7.When incriminating circumstances under Section 313 Cr.P.C.were put to the accused, they deny their complicity with the crime.

8. The learned trial Judge after meticulously going through the evidence both oral and documentary adduced before him, has found that the accused guilty under Section 21(d) and (g) of Tamil Nadu Forest Act and convicted the accused under the above provisions of law and sentenced them to undergo four months rigorous imprisonment each and levied a fine of Rs.250/- each with default sentence. The learned Judge has also convicted the accused under Section 20(a) of NDPS Act and sentenced them to undergo one year rigorous imprisonment each and a fine of Rs.2000/- each with default sentence. Aggrieved by the findings of the learned trial Judge, the accused have preferred this appeal.

9. Now the point for consideration in this appeal is whether the conviction and sentence by the learned trial Judge against the accused under Section 21(d) and (g) of the Tamil Nadu Forest Act and Section 20 (a) of NDPS Act is sustainable for the reasons stated in the memorandum of appeal?

10. Heard Mr.C.S.Dhanasekaran, learned counsel appearing for the appellant and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the respondent and considered their respective submissions.

11. The Point:
The learned counsel appearing for the appellant would focus the attention of this Court mainly on the flaw committed by the prosecution in failure to prove that the sample plant sent for analysis to the Regional Forensic Science Laboratory, Coimbatore is not that the one seized from the place of occurrence under Form"H". The learned counsel pointing out ExP5, the letter of requisition sent by P.W.1 Mylswamy, Forest Range Officer to the Forensic Science Laboratory, Coimbatore and contended that the sample

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noted under Ex P5 is" rooted Ganja plants with leaves net weight 0.100kgs". But under Ex P8, report, the plant analysed was having a root, branches , leaves with florescence(கதிர்) .Basing on the description of the sample plant as per Ex P8, the learned counsel would contend that the plant sent for analysis under Ex P8 is not the plant mentioned under Ex P5 which has no florescence ((கதிர்கள்) . In this regard, the learned counsel would point out that the evidence of P.W.1 in the cross examination wherein P.W.1 would admit in categorical terms that the plants found in the place of occurrence do not contain florescence ((கதிர்கள்) . As in Ex P2 Form"H",it is seen that five plants were seized and out of them only one plant was sent for chemical analysis. In Ex P2 Item No.6, it is stated that only one plant was separately packed for sending the same for chemical analysis. But that Item No.6, was written in different ink is admitted by P.W.2 in the cross examination.

12. So under such circumstances, it is highly doubtful whether the plant seized under Ex P1 mahazar was sent for chemical analysis Ex P5 and Ex P8 report relates to the sample plant seized from the place of occurrence under Ex P1 mahazar. The learned counsel would further point out that according to P.W.1 after taking samples under Ex P1, the remaining plants were destroyed by fire. But as per Section 48 of the NDPS Act, only under an order from the Gazetted Officer of the State Government , the ganja plants can be destroyed. But admittedly as per the evidence of P.W.1, there was no order passed by the competent authority for the destruction of the remaining plants. In the cross examination P.W.1 would admit that he has not prepared any mahazar for the destruction of the remaining plants at the place of occurrence. P.W.2 also in the cross examination would admit that there was no mahazar prepared for the destruction of the remaining ganja plants at the place of occurrence and the ash was also not seized after the destruction.

13. The seizure was effected on 24.3.2001 but the material objects seized including alleged ganja plants were reached the Court only on 9.4.2004. It is the case of the prosecution that the accused have trespassed in the forest land and cultivated ganja. If it is so, it is the bounden duty of the prosecution to show that the accused were found in the forest area.

14. In this regard, P.W.1 in his deposition in the cross examination would admit that there is no survey number for the place of occurrence and in the Government Gazettee, the place of occurrence has been declared as "a forest land". But he would admit that the said copy of the Government Gazettee was not produced but he has produced only Ex P7 Notification. Except the evidence of P.W.1 and ExP7, there is no evidence like Village Administrative Officer or Revenue Officials who will conversant with Ex P7 notification to correlate that the place shown in Ex P8 sketch as the ganja cultivated area to show that the area where the accused were

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arrested as per the evidence of P.W.1 comes within the area marked as Ganja cultivated land in Ex P8. So apart from the ipse dixit of PW1, the prosecution has not adduced any evidence to show that the place where A1 and A2 were arrested by P.W.1 is a forest land and that they have trespassed and cultivated ganja plants. Under such circumstances, it cannot be said that the offence under Section 21(d) and (g) of the Tamil Nadu Forest Act and Section 20(a) of NDPS Act has been proved beyond any reasonable doubt. The doubt certainly enure to the benefit of the accused.

15.In fine,the appeal is allowed and the conviction and sentence against A1 and A2 under Section 21(d) and (g) of the Tamil Nadu Forest Act and Section 20(a) of NDPS Act in S.C.No.134 of 2001 on the file of the Special Court for E.C./NDPS Act cases for the Districts of Coimbatore, Erode and Nilgiris at Coimbatore is set aside and the accused are acquitted from all the charges levelled against them. Fine amount if any paid, shall be refunded to them. The bail bond stands cancelled.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Sg

To

1. The Presiding Officer,Special Court for E.C./NDPS Act cases for the Districts of Coimbatore, Erode and Nilgiris at Coimbatore

2. The Public Prosecutor, High Court, Madras

3. The Forest Range Officer, Sirumugai .

4. The Superintendent ,Central Jail, Coimbatore.

+ 1 CC To Mr. S.Silambanan, Advocate SR NO.46367

Crl.A.No.827/2001

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gp/2.8.

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